(58)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Writ Petition (C) No.5666 of 2007

Petitioner — ICICI Lombard General Insurance Company Ltd. Kurla Bandra Complex (West), Mumbai, Through – Branch Office, Raipur, Distt. Raipur (CG)

versus

Respondents

1. Smt Meera Dei Singh
   Aged about 52 years,
   Wd/o Late Shri Rajeshwar Singh
2. Yashwendra Pratap Singh (Minor)
   Aged about 16 years,
   Adopted Son Late Shri Dhiraj Singh,
   Through Natural guardian Mother Smt. Meera Devi Singh, Wd/o Late Shri Rajeshwar Singh
   Respondent No.1 & 2 are R/o Village, Korhabhat, Tehsil-Pamagarh, Distt. Janjgir-Champa (CG) At present R/o Qr.No.M-1046, Adarsh Nagar Kusmunda, Tehsil-Katghora, Distt.Korba (CG)
3. Naresh Kumar Tandon
   Aged about 24 years,
   S/o Shri Sita Ram Tandon,
   R/o Village Mehu, Tehsil & Police Station – Pamgarh, Distt. Janjgir Champa (CG)

Writ Petition under Article 227 of the Constitution of India

Present :
Shri Kishore Bhaduri with Shri Rahul Mishra, counsel for the petitioner.
Shri Vimlesh bajpai, counsel for respondents No.1&2.
Shri Gurudev I. Sharan, counsel for respondent No.3.

ORAL ORDER
(Passed on 15th November, 2007)

Heard on I.A. No.2 for taking documents on record.

2. Considered and allowed. Documents are taken on record

(59)

3. This writ petition is being disposed of finally, at the stage of admission, with the consent of the parties.

4. The petitioner is aggrieved by order dated 28.7.2007 passed by the Additional Motor Accident Claims Tribunal, Katghora (CG) in claim case No.81/2006, whereby an application under Order-6 Rule-17 read with Section 151 of C.P.C. filed by the petitioner/insurance company for withdrawing its admissions made in the written statement regarding the offending vehicle being covered under the policy of insurance, was rejected.

5. The respondents No.1&2/claimants had, in the application under Section 166 of the Motor Vehicle, 1988 mentioned that the offending vehicle i.e. tractor trolley bearing registration No.CG.11-A/1639 and CG.11-A/1640 was insured by the petitioner herein under the policy No.3001/1310961/06/0904. The insurance company in paragraph-6 of its written statement vide Annexure.P-3, admitted that the tractor and trolley were insured under the abovementioned policy of insurance on the date of accident. After the closure of the evidence by the claimants, the petitioner/insurance company filed an application under Order-6 Rule-17 read with Section 151 of C.P.C. (Annexure.P-6) for withdrawing the said admissions made in para 6 of the written statement on the following grounds:-

1. that, the policy of insurance filed by the owner was a forged document.
2. that, the admissions made by the petitioner in para 6 of the written statement was made without verifying the genuineness of the xerox copy of the policy of insurance filed in the claims case.
3. that, the xerox copy of the policy of insurance filed in the case reveals that a revenue stamp was affixed on the policy whereas revenue stamp is never affixed on insurance policy under the Insurance Act.

(60)

4. that, on perusal of xerox copy with the original format of the policy, it transpired that the policy was a forged document.
5. that, the policy No. 3001/1310961/06/0904 mentioned in the policy did not pertain to the petitioner/insurance company and
6. that, on the table showing the premium, instead of the word "computation" the word "company" is seen which shows that the xerox copy was prepared on a computer.

6. Learned M.A.C.T. rejected the application under Order-6 Rule-17 read with Section 151 of C.P.C. on the sole ground that the insurance company could not be permitted to withdraw the admissions made by it in the written statement at such a late stage.

7. Learned counsel for the petitioner/insurance company urged that the order passed by the learned M.A.C.T. does not show conscious application of mind to any of the grounds urged by the petitioner/insurance company in its application under Order-6 Rule 17 read with Section 151 of C.P.C. He further urged that the Farmer package policy is never issued by the petitioner/insurance company.

8. Learned counsel for respondent.3/owner opposed the application and prayed that the insurance company could not be allowed to withdraw the admissions made by it in the written statement filed ~~after~~ with due verification. He placed reliance on *M/s Modi Spinning & Weaving Mills Co. Ltd. and another Vs. M/s Ladha Ram & Co.* **AIR 1977 Supreme Court 680** in support of his contentions.

9. Having heard the rival submissions, I have perused the impugned order dated 28.7.2007. It would be wholly unjust to fasten liability on the insurance company where the insurance company is able to produce material before the Court to show that the policy of insurance produced by the owner is a forged document and was never issued by the insurance company. The impugned order does not show conscious application of mind by the M.A.C.T. on any of the

(61)

grounds raised by the petitioner/insurance company in its application under Order-6 Rule -17 read with Section 151 of C.P.C.

10. Under these circumstances, interest of justice would be served if the impugned order is set aside and a direction is given to the M.A.C.T. to pass a speaking and a well reasoned order after considering all the grounds raised by the insurance company in its application under Order-6 Rule-17 read with Section 151 of C.P.C. Ordered accordingly.

11. In view of the above, the petition stands disposed of.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Priya